HONERABLE Ms. JUSTICE G. ROHINI

WRIT PETITION No. 15623 OF 2006

Date: 30.08.2006

BETWEEN:

A. Nageswara Rao

…. PETITIONER

And

1. The Commissioner, Prohibition and Excise at Nampally, Hyderabad, and others.

…. RESPONDENTS

ORAL ORDER:

This writ petition is filed aggrieved by the action of the third respondent in directing the petitioner to submit a fresh lease deed to take further necessary action for grant of licence in his favour to run a Bar and Restaurant in the name and style of M/s.New Anupama Restaurant and Bar at premises No.10-2-289/4, AC Guards, Hyderabad.

It is not in dispute that the fourth respondent herein is the owner of the said premises, which was leased out in favour of one C. Narender Reddy, under a lease deed dated 25.03.2002 for a period of 10 years. The petitioner claims that subsequently, the said Narender Reddy entered into a partnership with the petitioner on 21.06.2002 to carry out the business of Bar and Restaurant and in terms of the said partnership deed, a licence was obtained in the name of the petitioner for running a Bar and Restaurant for the excise year 2002-2003 in the premises No.10-2-289/4, AC Gaurds leased out to C. Narender Reddy. It is claimed that on the basis of the lease deed dated 25.03.2002 under which the lessee was permitted to carry on any lawful business as well as the partnership deed dated 21.06.2002, the respondents 1 to 3 have been renewing the licence in favour of the petitioner from time to time. Even for the excise year 2005-2006, the licence was renewed without raising any objections. While so, during the excise year 2005-2006, the fourth respondent raised certain disputes and consequently, the

petitioner was constrained to file O.S.No.40 of 2006, which is now pending in the Court of V Senior Civil Judge, Hyderabad. Seeking temporary injunction restraining the fourth respondent herein from interfering with his possession, the petitioner filed I.A.No.130 of 2006 under Order XXXIX Rules 1 and 2 of CPC and the same was allowed by the Civil Court by its order dated 01.06.2006 granting temporary injunction restraining the defendant therein from dispossessing the petitioner otherwise than in due process of law. However, it was made clear that the findings recorded therein shall not effect the consideration of the application pending before the Excise Superintendent for renewal of excise licence subsequent to June 2006.

Thereafter, on an application made by the petitioner, the first respondent granted prior clearance for grant of licence, vide proceedings dated 28.06.2006. On the basis of the same, the petitioner made an application in Form-1B enclosing lease agreement and the partnership deed for grant of licence in Form-2B. However, the third respondent under the impugned letter dated 22.07.2006 directed the petitioner to submit a fresh lease deed for taking necessary action.

Aggrieved by the same, this writ petition is filed contending *inter alia* that there is no provision under the Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005, (for short 'the Rules') which obligates the applicant to enclose a fresh lease deed as required by the third respondent. It is contended that the only requirement under Rule 6 of the Rules is to produce lease deed for the proposed premises, executed by the owner of the premises, and since the lease deed dated 25.03.2002 is valid for a period of 10

years, the action of the third respondent in insisting on a fresh lease deed is arbitrary, illegal and without jurisdiction. Accordingly, a Writ of Mandamus is sought declaring the impugned proceedings dated 22.07.2006 as illegal, without jurisdiction and contrary to the statutory rules, and consequently to direct the respondents to grant licence to the petitioner to run the Bar and restaurant in the premises bearing No.10-2-289/4, AC Guards, without insisting for production of a fresh lease deed from the owner of the premises.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader for Prohibition and Excise appearing for the respondents 1 to 3.

In the counter affidavit filed on behalf of the respondents 1 to 3 it is admitted that prior clearance has been granted by the first respondent, in favour of the petitioner. However, it is contended that the grant of such prior clearance shall not confer any right on the applicant for grant of licence in Form-2B. It is further stated that the fourth respondent, who is the landlord of the premises in question, informed respondents 1 to 3 that the lessee C. Narender Reddy surrendered the lease deed due to incapacity to pay the rents and accordingly the lease was cancelled on 18.02.2006. The fourth respondent had also complained that the writ petitioner, who is the licensee has been running the Bar and Restaurant in the premises in question under the guise of a false agreement. Having considered the said objections, the third respondent called upon the petitioner to produce a fresh lease deed, which cannot be said to be either arbitrary or illegal.

The learned counsel for the petitioner while placing

reliance on the decision reported in **P. Vasantha v. Government of Andhra Pradesh, Revenue (Ex.III) Department**[1] contended that mere production of lease deed is sufficient to grant licence and that the Licensing Authority is not obligated to verify the genuineness of such lease deed.

Rule 6 of the Rules specifies certain restrictions on the grant of licence. As per sub-rule (1)(vi) of Rule 6 it is necessary for the applicant to produce lease deed on a stamp paper of the proposed licenced premises from the owner of the premises.

In the decision relied upon by the learned counsel for the petitioner, the question was whether the owner of the premises has any right to object for renewal of licence. In other wards, is it open to the Licensing Authority to grant/renew the licence without the consent of the owner of the premises. The petitioner in the said writ petition was the owner of the premises, which was let out to the fifth respondent therein to run a cycle shop. However, the fifth respondent along with the fourth respondent started a liquor business without the consent or permission of the landlady. This Court while interpreting the scope and object of Rule 29(3)(b) of the A.P. Indian Liquor and Foreign Liquor Rules, 1970 held that mere production of the lease deed is sufficient to grant licence to the proposed licensee. This Court arrived at the said conclusion in the light of the particular facts and circumstances of the said case wherein the lease deed was still subsisting and the fifth respondent therein was permitted to sub-lease the premises to third parties. Thus, it was held that the fifth respondent shall be deemed to be the occupant of the premises and therefore, during the existence of the lease deed he is entitled for grant of licence under Rule 29 (3)(b) of the A.P. Indian

Liquor and Foreign Liquor Rules, 1970.

The facts in the case on hand are entirely different and therefore the decision cited by the petitioner is of no assistance.

As noted above, the fourth respondent, who is the owner of the premises in question has informed the third respondent that the lease in favour of C. Narender Reddy stood cancelled in February, 2006 itself. Admittedly, the licence stands in the name of the writ petitioner who claims to have entered into a partnership with the said C. Narender Reddy. Strangely, the said C. Narender Reddy is not made a party to this writ petition and nothing has been placed before this Court to contradict the specific plea of the fourth respondent that the lease in faour of C. Narender Reddy stood cancelled in February, 2006 itself.

Since, the licence for the year 2002-2003 and also for subsequent years was granted only on the basis of the lease granted in favour of C. Narender Reddy, and since the owner has come up with a specific plea that the said lease stood cancelled, in my considered opinion the third respondent is justified in calling upon the petitioner to produce a fresh lease deed from the owner of the premises. The said action of the third respondent cannot be said to be contrary to the statutory provisions. Even the Civil Court while granting the temporary injunction made it clear that the findings recorded therein shall not come in the way of the Licensing Authority to consider the application of the petitioner for grant of licence to carry on the business in the premises in question. Hence, in case there is any valid lease from the owner of the premises as on today, it is always open to the petitioner to produce the same incompliance with Rule 6 (1)(vi) of the Rules. For the aforesaid reasons, I do not find any substance in the

contentions raised by the petitioner.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

_____

(G. Rohini, J.)

30th August, 2006
Js.

---

[1] 2001 (3) ALT 280